Supreme Court, U.S.
FILED

05 1229 MAR 20 2006

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No.

IN THE

SUPREME COURT of the UNITED STATES

Wild Rice River Estates, Inc.,

Petitioner,

v.

City of Fargo, a North Dakota municipal corporation,

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of North Dakota

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The City of Fargo, North Dakota, imposed a building permit moratorium which prevented the sale of lots or any construction along a newly-designated preliminary floodway affecting a rural residential subdivision developed and owned by Wild Rice River Estates, Inc. [hereafter, "Wild Rice"] which is located along the banks of the Wild Rice River about three miles outside of the city limits. The City of Fargo's moratorium was imposed to prevent development and freeze the price while the City of Fargo sought Federal funding for governmental acquisition of Wild Rice's residential lots which had been previously platted and zoned for single-family residences requiring considerable landowner expense due to the demands of the government.

Approximately two (2) months after the August 10, 1998, moratorium, the City of Fargo passed ordinances on October 5, 1998 [that had no legal effect upon Wild Rice's rural residential subdivision, but the City of Fargo withheld announcing such determination until time of trial], and continued the building permit moratorium for another nineteen (19) months hopefully awaiting arrival of Federal monies.

Only after Wild Rice served a complaint alleging "inverse condemnation" in late-March, 2000, did the City of Fargo act to lift the moratorium on May 1, 2000. During the moratorium, the City of Fargo did not conduct any studies, nor did it do any planning, affecting Wild Rice's rural residential subdivision. The City of Fargo had determined it would maintain the building permit moratorium until an adversely-affected landowner sought protection of the

judicial process – the triggering event for any lifting of the moratorium.

The questions presented are:

1. Is a municipality's twenty-one month moratorium on building permits a compensable taking under the Fifth Amendment and Fourteenth Amendment when:

(a) the major purpose of continuing the moratorium was to prevent development to suppress the purchase price for an anticipated governmental acquisition of the affected land;

(b) the landowner was deprived of all economically viable uses of land during the moratorium;

(c) the governmental entity imposing the moratorium on building permits conducted no reviews or studies to create new ordinances applicable to the landowner's property during the moratorium period; and

(d) the moratorium was only to be lifted by the municipality after an impacted landowner brought an inverse condemnation action?

2. Did the Supreme Court of North Dakota properly apply *Penn Central* factors when it disregarded the economic impact of the moratorium upon a landowner during the course of the moratorium, and advanced a discarded test of governmental good faith to determine whether there had been a Fifth Amendment taking requiring just compensation?

LIST OF ALL PARTIES TO THE PROCEEDING

The Petitioner, Wild Rice River Estates, Inc., is a North Dakota corporation. All shares of stock in the corporation are held by a trust created by Anton Rutten, now deceased. Anton Rutten's widow Fredarica Rutten is the lifetime beneficiary of the trust. There is no parent corporation or publicly held corporation owning 10% or more of the company's shares of stock.

The Respondent, City of Fargo, is a municipal corporation organized under the laws of the State of North Dakota.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., the Chief Justice and Associate Justices of the Supreme Court of the United States of America.

Petitioner, Wild Rice River Estates, Inc., respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Dakota entered in this case on November 14, 2005.

OPINIONS BELOW

The opinion of the Supreme Court of North Dakota is reported in *Wild Rice River Estates, Inc. v. City of Fargo*, 2005 ND 193, 705 N.W.2d 850. This decision is found at Appendix pages 1 through 21.

The Supreme Court of North Dakota's unreported December 23, 2005, denial of Petitioner's timely filed Petition for Rehearing is found at Appendix pages 54 and 55.

The unreported Memorandum Opinion of the District Court of Cass County, North Dakota, dated December 6, 2004, is found at Appendix pages 22 through 30.

The unreported Findings of Fact, Conclusions of Law, and Order for Judgment of the District Court of Cass County, North Dakota dated December 23, 2004, are found at Appendix pages 31 through 49.

The unreported Judgment of Dismissal of the District Court of Cass County, North Dakota, dated December 27, 2004, is found at Appendix pages 50 and 51.

The unreported Order Denying Plaintiff's Post Trial Motions of the District Court of Cass County, North Dakota, dated January 18, 2005, is found at Appendix pages 52 and 53.

BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a). Pursuant to Supreme Court Rule 13.1, this petition is filed within 90 days of the denial of the petition for rehearing by the Supreme Court of North Dakota on December 23, 2005. See, Appendix pages 54 and 55.

The federal issues involved in this case were first raised by Petitioner's Complaint filed in the District Court of Cass County, North Dakota. See, Appendix pages 56 through 69.

After the District Court of Cass County, North Dakota decided the federal issues adversely to this Petitioner, the federal issue of whether there was a taking entitling Petitioner to just compensation was raised in post judgment motions to alter, amend or for further findings. Portions of Petitioner's post judgment motions to the District Court are set forth on Appendix pages 70 through 84. Petitioner's post judgment motions were denied by the District Court of Cass County, North Dakota. See, Appendix pages 52 and 53.

The federal issues involved in this Petition were in the Supreme Court in Petitioner's Appellate Briefs to said Court and in Petitioner's Petition for Rehearing. Portions of Petitioner's Appellate Brief to the Supreme Court of North Dakota are found at Appendix pages 85 through 109. Portions of Petitioner's Reply Brief to the Supreme Court of

North Dakota dated June 22, 2005, are found at Appendix pages 110 through 117. Portions of Petitioner's Petition for Rehearing to the Supreme Court of North Dakota are found at Appendix pages 118 through 129.

CONSTITUTIONAL PROVISIONS AND STATUTES AND RULES INVOLVED IN THIS PETITION

Article 5 of the Articles of Amendment to the Constitution of the United States of America states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article 14, § 1, of the Articles of Amendment to the Constitution of the United States of America states:

> § 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall

> abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, §16 of the Constitution of North Dakota provides:

> Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and